

IAGJNEJC

Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 224 ALC

5 ALI SADR HASHEMI NEJAD,

6 Defendant.

7 -----x

8  
9 October 16, 2018  
10 11:30 a.m.

11  
12 Before:

13 HON. ANDREW L. CARTER, JR.,

14 District Judge

15  
16 APPEARANCES

17 GEOFFREY S. BERMAN,  
18 United States Attorney for the  
19 Southern District of New York  
20 REBEKAH A. DONALESKI,  
21 GARRETT LYNCH, (Special AUSA)  
22 Assistant United States Attorney

23 STEPTOE & JOHNSON, LLP,  
24 Attorney for defendant  
25 BY: REID WEINGARTEN, Esq. (NYC)  
BRIAN MATTHEW HEBERLIG, Esq.  
Of counsel

Also Present:

MICHAEL UBANOWICZ, Special Agent FBI

1 (In open Court)

2 (Case called)

3 THE COURT: Be seated. Good morning.

4 I have seen the joint status report and proposed  
5 order. The proposed order seems fine to me. I am willing to  
6 sign off on that.

7 Regarding the next steps, it seems to me we need to  
8 set a date for a joint status report to see where we are in  
9 terms of the privilege issue and perhaps another date in court.  
10 Let me hear from the parties how you would like to proceed,  
11 starting with counsel for the government.

12 MS. DONALESKI: Your Honor, that sounds fine to the  
13 government. We suggest a joint status report in 30 days and  
14 perhaps a next conference in front of your Honor in 60 days.

15 THE COURT: Okay.

16 MR. WEINGARTEN: What we could also do is discuss an  
17 overall schedule with the government in terms of motions and  
18 responses, if that is the court's pleasure.

19 THE COURT: Okay. Give me a sense in terms of what  
20 you're talking about in terms of motions and responses.

21 MR. WEINGARTEN: You know, we have, I think, a  
22 significant number of substantive motions we intend to file  
23 maybe in 30 days, and we could work it out with the government  
24 and have a proposed schedule, if that is the court's pleasure.

25 THE COURT: Give me a sense what sort of substantive

1 motions we are talking about here.

2 MR. WEINGARTEN: Well, we are new to the case and we  
3 are just digging in. By way of example -- and I think this  
4 perhaps could affect the trial schedule -- we believe there are  
5 significant exculpatory witnesses abroad, and we had hoped that  
6 we would come to court today with a more specific idea about  
7 those witnesses and our requests.

8 Unfortunately, and there is no disrespect to the  
9 court, I recently had neck surgery, and that is why I am not  
10 wearing a tie. My travels are a little bit curtailed right  
11 now. What we anticipate is going back to the court at some  
12 point, probably first with the government to seek agreement how  
13 we can secure that exculpatory evidence before trial. That  
14 would be one.

15 Number two, there are significant issues we believe  
16 relating to evidence before the grand jury and the search  
17 warrant affidavit. We're exploring those. We believe the  
18 affidavit and search warrant dramatically overstated the  
19 evidence against my client. We are exploring possibilities  
20 there.

21 On sanction cases it is a complicated, as the court is  
22 aware. Its is an open issue about intent requirements, what  
23 was instructed to the grand jury and obviously what the court  
24 will instruct this jury, we will explore those.

25 The issue of extraterritoriality, we are not writing

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1 on a joint piece of paper, we understand that. There are  
2 interesting issues there as well. It is an interesting  
3 subject. We are just under way exploring the possibilities.  
4 We think if we have 30 days to file our motions, that will be  
5 adequate.

6 THE COURT: Counsel for the government.

7 MS. DONALESKI: Your Honor, if the defense wants to  
8 propose a schedule to the government, we can work together and  
9 propose something to the court. That sounds fine with the  
10 government.

11 THE COURT: Let me find out from defense counsel, is  
12 there any overlap between the substantive statements that you  
13 would be putting in these motions or any legal arguments that  
14 you might wish to make in the context of these motions and the  
15 issues regarding privilege that exist here potentially?

16 MR. WEINGARTEN: Potentially. I think privilege issue  
17 is as follows: It seems to us some privilege material, both  
18 the marital privilege and attorney-client privilege, did slip  
19 through the tainting to prosecutors, okay? I think where that  
20 leads remains to be seen. That is why we put together this  
21 proposal. I think there is a possibility that we will come  
22 back and say our client's been prejudiced. There is a  
23 possibility we won't. That is the point of the work ahead.

24 So I think it is an open question at this point.

25 THE COURT: Here is what makes sense to me, but I want

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1 to hear from counsel. Let's get the joint status report  
2 regarding any potential privilege issues in approximately 30  
3 days, and then let's have a status conference sometime the  
4 first full week in January, and then at that date in January  
5 perhaps we can set a motion schedule to the extent that defense  
6 counsel wishes to file any motions.

7 Let me hear how counsel what your thoughts are,  
8 starting with counsel for the government.

9 MS. DONALESKI: That is fine with the government, your  
10 Honor. Thank you.

11 MR. WEINGARTEN: That is fine.

12 THE COURT: Let's get a joint status report from the  
13 parties. Can we get a date in November?

14 THE CLERK: November 15th.

15 THE COURT: And then let's get a status conference  
16 perhaps on January the 9th. We have availability then?

17 THE CLERK: 10:00 am.

18 THE COURT: Does that date and time work for everyone?

19 MS. DONALESKI: Yes, your Honor.

20 MR. WEINGARTEN: Yes, your Honor.

21 THE COURT: I believe that time has been excluded up  
22 until May the 7th, I believe.

23 THE CLERK: May 9th, Judge.

24 THE COURT: I am sorry. Thank you.

25 THE CLERK: You're welcome.

1           THE COURT:   Until May 9th under the Speedy Trial Act,  
2 but to the extent it hasn't been, I will exclude time from  
3 today's date until January 9th so that defense counsel may  
4 review any issues regarding any potential motions that defense  
5 may wish to file. I find that it is in the interests of Mr.  
6 Nejad and interests of the public to exclude time under the  
7 Speedy Trial Act from today's date until January 9th.

8           I further find Mr. Nejad's interest and the interests  
9 of the public are in the interests of justice and outweigh the  
10 public's interest in a speedy trial, and I will enter an order  
11 to that effect.

12           Is there anything else from the government today?

13           MS. DONALESKI:   No.   Thank your Honor.

14           THE COURT:   Anything else from the defense?

15           MR. WEINGARTEN:   Just briefly, your Honor.

16           Obviously, I understand the trial is set in May. I  
17 wondered if there was any flexibility to that date? There are  
18 unforeseen circumstances in our life that has come up. I don't  
19 know if now is the time to raise them or we wait until we are  
20 back together.

21           THE COURT:   Let's raise them now. It is a bit out,  
22 the trial date, but let me hear you.

23           MR. WEINGARTEN:   Only this, your Honor. I had a trial  
24 in the Northern District of Dallas in front of Judge Lindsay  
25 set now for March. I anticipate for a variety of reasons that

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1 are not relevant for this proceeding that that trial was not  
2 going to take place in March. It appears it may well.

3 If that is the case, I am wondering if there is any  
4 flexibility moving this trial up or back, and if there isn't,  
5 then the court set this consistent with the schedule, and we'll  
6 make it work.

7 THE COURT: Let me hear from the government.

8 MS. DONALESKI: Your Honor, perhaps it makes more  
9 sense to see how things shake out and then determine this when  
10 we're back together in January.

11 THE COURT: Okay. All right. We'll wait and see  
12 where we are. Obviously, this trial date was set previously --

13 MR. WEINGARTEN: Understood completely.

14 THE COURT: -- prior to new counsel coming in on this  
15 case, and again it is a ways off from today. We'll wait and  
16 see. Is there anything else from the government or the  
17 defense?

18 MS. DONALESKI: No, your Honor.

19 MR. WEINGARTEN: No, your Honor.

20 THE COURT: We're adjourned. Thank you.

21 (Court adjourned)  
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